

# FEDERAL COMMUNICATIONS COMMISSION

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April 15, 2010

Mr. Steven T. Butler  
c/o Butler Broadcasting Company  
1780 Holly Street  
Fayetteville, AR 72701

In re: NEW (FM); Key West, FL  
Steven T. Butler  
Facility ID No. 170942  
CP application BMPH-20100311ACQ

Dear Mr. Butler:

Your modification application proposes a non-adjacent channel change, from Channel 244C2 in construction permit BNPH-20070502ABL, to Channel 285A in this application. As justification for the channel swap, you state that the original allotment that was auctioned (prior to grant of your underlying construction permit) was for Channel 244A. Because the original allotment was Class A, you apparently believe that this constitutes a same class, non-adjacent channel swap.

However, your line of reasoning is incorrect. The Class A allotment on Channel 244 ceased to exist when construction permit BPH-20070502ABL was granted. At that point it was replaced with a Class C2 assignment on Channel 244.<sup>1</sup> Consequently, any change to a non-adjacent channel for this unlicensed

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<sup>1</sup> Condition No. 4 on construction permit BNPH-20070502ABL states as follows:

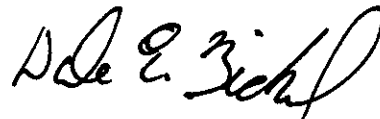
Pursuant to the grant of this construction permit and the authority found in Sections 4(i), 5(c)(1), 303 and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b), 0.283, 1.420, 73.203(b), and 73.3573 of the Commission's Rules, the FM assignment IS MODIFIED as follows:

Community	Channel No.
Key West, FL	Add 244C2, Delete 244A

Consequently, no Channel 244A assignment in Key West existed at the time this modification application was filed.

facility requires a petition for rulemaking proposing the channel and class substitution.<sup>2</sup> Therefore, your proposal is unacceptable for filing, and application BMPH-20100311ACQ IS DISMISSED.

Sincerely,

A handwritten signature in black ink, appearing to read "Dale E. Bickel". The signature is fluid and cursive, with the first name "Dale" and last name "Bickel" clearly distinguishable.

Dale E. Bickel  
Senior Engineer  
Audio Division  
Media Bureau

cc: Mr. David Tillotson  
: Hatfield and Dawson

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<sup>2</sup> See *Revision of Procedures Governing Amendments to FM Table of Allotments and Changes of Community of License in the Radio Broadcast Services*, Report and Order, FCC 06-163, 21 FCC Rcd 546 (2006) at Paragraph 15 ("we will permit an FM non-reserved band permittee or licensee to use notice and comment procedures to modify its current assignment to specify a non-adjacent class upgrade or downgrade in the same community of license").